No. 99 824 NOV 0 8 1999

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In The

Supreme Court of the United States

ELNORA MAE BOYD, individually and as personal representative of the estate of Richard Boyd,

Petitioner,

v.

WATERFRONT EMPLOYERS ILA PENSION PLAN, in the ports of South Carolina,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Is a putative spouse in South Carolina entitled to ERISA benefits upon the death of her putative husband?

2. Is the decision of the Fourth Circuit Court of Appeals in direct conflict with another case on the same point in the Second Circuit Court of Appeals?

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is set out in the Appendix at page 1. (App. 1) The opinion of the United States District of South Carolina, Charleston Division, is set out in the Appendix at page 7. (App. 7) Both opinions are unpublished.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. § 1254. The United States Court of Appeals for the Fourth Circuit issued its decision in this case on July 13, 1999. Panel rehearing and rehearing en banc were timely requested. Rehearing was denied on August 9, 1999. This Petition is filed within 90 days of the panel rehearing denial and is thus timely.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The matter at issue is the Petitioner's right to receive benefits under the Employees Retirement Income Security Act (ERISA) plan covering her deceased putative spouse.

29 U.S.C. § 1001 (a) sets forth the policy reasons for the adoption of the ERISA law including the goal to assure the equitable character of such plans. It provides in full:

§ 1001. Congressional findings and declaration of policy

(a) Benefit plans as affecting interstate commerce and the Federal taxing power

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of

employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

29 U.S.C. § 1002(8) defines beneficiary as "a person designated by a participant, or by the terms of an employee benefit plan".

29 U.S.C. § 1002(15) defines relative as "relative means a spouse, ancestor, lineal descendant, or spouse of lineal descendant".

South Carolina Code Annotated § 20-1-80 (1976, as amended) provides:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, nor to any person who shall be divorced or whose marriage shall be declared void by the sentence of a competent court.

STATEMENT OF THE CASE

Petitioner Boyd began to receive benefits from the Respondent's Plan upon the death of Richard Boyd in a job-related accident in 1989. In 1993, the Plan discovered that she had never been legally divorced from a prior husband and terminated the benefits.

Boyd appealed the termination decision administratively to no avail and brought suit in the Court of Common Pleas, Charleston County, State of South Carolina, on January 21, 1997, to reinstate the benefits. The matter was removed to the District Court of South Carolina,

Charleston Division, since the Plan was governed by the Employee Retirement Security Act (ERISA), and was heard before a District Judge in a bench trial on February 3, 1998. Judgment denying Boyd's claim was entered on February 25, 1998, and appeal was filed with the United States Court of Appeals on March 25, 1998.

The District Court Order was affirmed by the Appeal Panel on July 13, 1999. Rehearing was denied on August 9, 1999.

ARGUMENT

I. PETITIONER IS ENTITLED TO SURVIVING SPOUSE BENEFITS FROM THE RESPONDENT PENSION PLAN AS SHE IS THE PUTATIVE SPOUSE OF A PLAN MEMBER.

The question of whether the Putative Spouse doctrine is viable in South Carolina has never been answered. The Putative Spouse doctrine recognizes the validity of a marriage made in good faith by parties who participated in a ceremonial marriage even though the marriage is void due to a legal impediment. The doctrine has been adopted in many jurisdictions to protect persons who marry in good faith by providing them the civil benefits of a valid marriage even though the marriage was actually null and void. Blakesley, The Putative Marriage Doctrine, 60 Tul. L. Rev. 1 (1985).

Although the viability of the putative marriage doctrine in South Carolina has never been ruled upon, a South Carolina Court has recently commented upon the doctrine with apparent favor. Lovett v. Lovett, 329 S.C. 426, 494 S.E.2d 823 (S.C. App. 1997). The Lovett case involved claims by a "spouse" to a share of the estate even though she had no divorce or annulment from her fifth, sixth, seventh, or eighth marriages. The Court of Appeals raised the issue of the putative marriage doctrine but declined to rule upon it

since the issue had not been raised in the court below. Id. at 826.

It is unquestioned that Pension Plan member Richard Boyd and Petitioner Ella Boyd thought they were married. Ella and Richard Boyd were married on July 21, 1967, securing an official marriage certificate at that time. (App.18,28)

They lived together as husband and wife from that time until his death in 1989. (App.19) Richard Boyd was a member of the Plan at the time of the marriage and at the time he was killed in a work-related accident in 1989. (App.20) He had designated Ella Boyd as his spouse on plan documents. (App.38)

The Respondent paid surviving spouse benefits to Ella Boyd from her husband's death until 1993, when it was discovered that she had never been legally divorced from a prior husband, George Alston. (App.39,40). Petitioner Boyd married George Alston June 29, 1951 (App.49), and the Domestic Relations Court of Charleston County granted Petitioner a "legal separation" by Order dated May 11, 1954. (App.46,47)

Petitioner, who was only 21 years old at the time with only a seventh grade education, thought she was divorced by that Court Order (App.17,22).

Ella and Richard Boyd thought they were legal husband and wife (App.22,23), as did members of their community (App.26) and church (App.31,32,33).

The problem was discovered when George Alston, who also remarried and was a member of the Respondent Plan, inquired about the status of his benefits as he was about to retire. (App.39,40) Alston then obtained a divorce from Ella Boyd. (App.48,49,50)

There is no competing spouse. The benefits are either paid to the Petitioner or are retained by the Respondent. ERISA is designed to insure that plans are equitable. 29 U.S.C. §1001. However, the decision in this

case is grossly inequitable. Furthermore, the ERISA definition of "beneficiary", 28 U.S.C. § 1002 (8) or "relative", 28 U.S.C. § 1002 (15) do not specifically require a legal marriage.

It is unjust that a legal technicality should deprive Boyd of the benefits earned by Richard Boyd during a lifetime of labor under the plan. There are no others who claim to be the spouse of Richard Boyd, and it is inequitable that the Plan should be allowed to keep the benefits rather than pay them to the woman whom Richard thought was his spouse and who he designated as his spouse and beneficiary under the Plan.

This is especially true when the legal technicality is considered in light of its historical context. The legal separation Order was issued in 1954 when South Carolina was a segregated society. Ella Boyd, a black woman, had very limited educational opportunities and limited access to a lawyer or even to the legal system and she was unrepresented at the Court proceedings (App.46)

Petitioner concedes that South Carolina marriage statutes hold that her marriage to Richard is void due to the legal impediment of the prior undissolved marriage. S.C. Code Ann. § 20-1-80 (1976, as amended). However, the harshness of statutes such as this one has been ameliorated in many jurisdictions by the adoption of the putative marriage doctrine which grants the civil benefits of a good faith, ceremonial marriages even if the marriage was void due to some legal impediment. Blakesley, The Putative Marriage Doctrine, 60 Tul. L. Rev. 1 (1985).

The only South Carolina court that has discussed the putative marriage doctrine looked upon it with apparent favor. Lovett, supra. Perhaps the South Carolina Supreme Court would also look upon the doctrine with favor. Petitioner deserves to at least have the question of the viability of the putative spouse doctrine in South Carolina

answered before she is forever denied the benefits her spouse worked his entire life to provide to her.

II. THE DECISION IN THIS CASE IS IN DIRECT CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS DECISION ON THE SAME IMPORTANT POINT.

When the United States Court of Appeals for the Second Circuit was confronted with a dispute between competing spouses for ERISA benefits, it certified the question of whether the second spouse could receive benefits even though her marriage was void due to the existence of a prior, undissolved marriage. Grabois v. Jones and Jones, 77 F.3d 574 (U.S.C.A. 2d Cir.). Although the New York court declined to accept the question for various reasons, Grabois v. Jones and Jones, 667 N.E.2d 307 (N.Y. 1996), it is likely that the South Carolina Supreme Court would welcome the question, especially since the question of the viability of the putative marriage doctrine has been raised by the South Carolina Court of Appeals in Lovett.

CONCLUSION

Justice and equity demand that Ella Boyd be given every opportunity allowed in the law to receive these benefits she is so equitably entitled to as the putative spouse of Richard Boyd. No one is hurt by certifying the questions to the South Carolina Supreme Court as she is not receiving benefits at this time and there is no one else who is seeking the benefits. It is just Ella and the Pension Plan.

The equities in this case may well compel the South Carolina Supreme Court to adopt the putative marriage doctrine and the decision of the Court of Appeals should be reversed and remanded with instructions to certify the

question of the viability of the putative marriage doctrine to the South Carolina Supreme Court.

Alternatively this Court may determine that the question of the right of a Putative Spouse to receive ERISa benefits should be answered by the Federal Courts to insure equal treatment for all Putative Spouses nationwide. If so, Petitioner requests that this Court rule that Putative Spouses are entitled to receive ERISA benefits. Such a ruling would be consistent with the equitable mandate of the ERISA Law. 29 U.S.C. §1001(a)

Respectfully submitted,

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Dated: November 5, 1999

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UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ELNORA MAE BOYD, individually and as personal representative of the estate of Richard Boyd,

Plaintiff - Appellant,

v.

WATERFRONT EMPLOYERS ILA PENSION PLAN, in the ports of South Carolina,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston.
David C. Norton, District Judge.
(CA-97-252-18-2)
98-1456

Argued: March 4, 1999
Decided: July 13, 1999

Before HAMILTON and TRAXLER, Circuit Judges, and LEE, United States District Judge for the Eastern District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Howard Wayne Floyd, WAYNE FLOYD LAW OFFICE, P.A., West Columbia, South Carolina, for Appellant. Marvin DeWitt Infinger, SINKLER & BOYD, P.A., Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Plaintiff-Petitioner Elnora (Ella) Mae Boyd brought this action seeking benefits as the "surviving spouse" of Richard Boyd from Defendant-Respondent Waterfront Employers - I.L.A. in the Ports of South Carolina Pension Plan (the "Plan"). The Plan is a defined benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"). After discovering that Ella and Richard Boyd were never legally married, the Plan terminated benefits and this termination was affirmed by the Plan's trustees ("Trustees"). Ms. Boyd sued to reinstate her benefits in South Carolina state court. The Plan removed the case to district court because it involved benefits under ERISA. After a bench trial, the district court upheld the Trustees' decision. For the reasons stated below, we affirm the decision of the district court.

Plaintiff Ella Boyd "married" Richard Boyd on July 27, 1967. Richard Boyd was a member of the Plan. Mr. Boyd was killed in a job related accident in 1989, at which time the Plan covered him. The Plan paid Ms. Boyd spousal benefits and life insurance proceeds in excess of $170,000. Previously, Ms. Boyd had married George Alston on June 29, 1951. In 1954, the Domestic Relations Court of the County of Charleston ordered their "legal separation." However, they were never legally divorced. When Mr.

Alston, who was also a member of the same plan, inquired about his benefits, he revealed that he was not divorced from Ms. Boyd. Upon investigation, the Plan confirmed these facts and terminated payments to Ms. Boyd. We review this decision.

According to Ms. Boyd, she and Richard Boyd thought that they were husband and wife. The couple entered a good faith, licensed ceremonial marriage in 1967, raised three children, and lived together until Mr. Boyd's death in 1989. Ms. Boyd argues that "beneficiary" is defined as the person designated by the member, including any person appearing equitably entitled to payment. As she was designated Richard Boyd's beneficiary under the Plan, Ms. Boyd seeks benefit payments. Furthermore, she contends that the Plan does not specifically preclude a putative spouse from receiving spousal benefits. Although the putative spouse doctrine has not been ruled on in South Carolina, Ms. Boyd contends that an intermediate appellate decision indicates that it is a viable doctrine. See Lovett v. Lovett, 494 S.E.2d 823, 826 (S.C. Ct. App. 1997) (recognizing that some jurisdictions have adopted the putative spouse doctrine but declining to address the issue). Alternatively, Ms. Boyd would like the question certified to the South Carolina Supreme Court as the Second Circuit certified a similar question regarding ERISA benefits and the putative spouse doctrine. See Grabois v. Jones, 77 F.3d 574 (2d Cir. 1996).

On the contrary, the Plan argues that trustees and administrators have the primary responsibility for determination of benefit issues and interpretations of ERISA plan provisions. In this instance, Defendant contends that both the statute and the cases interpreting the statute indicate that the Trustees' decision to deny Ms. Boyd benefits was a reasoned, deliberate, principled decision. Finally, the Plan cautions that South Carolina has not adopted the putative spouse doctrine.

The parties dispute which standard of review, de novo or abuse of discretion, applies. Ms. Boyd contends that

this Court has de novo review over all issues presented, particularly whether the district court applied the correct law when it failed to recognize the putative spouse doctrine. The Plan argues that when reviewing the Trustees' decision the Court must apply the abuse of discretion standard.

This Court reviews questions of law de novo[1] However, where the benefit plan gives the administrator or trustee discretionary authority to determine eligibility or to construe the terms of the plan, the denial decision must be reviewed for abuse of discretion. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Under this deferential standard, the trustee's decision will not be disturbed if it is reasonable, even if this Court would have come to a different conclusion independently. Ellis v. Metropolitan Life Ins. Co., 126 F.3d 228, 232 (4th Cir. 1997). Such a decision is reasonable if it is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence. Brogan v. Holland, 105 F.3d 158, 161 (4th Cir.1997).

As a threshold inquiry, the reviewing court determines de novo whether the ERISA plan confers discretionary authority on the trustee and if so whether the trustee acted within that discretion. Ellis, 126 F.3d at 233. In this case, the Trustees possessed the discretionary authority to determine whether Ms. Boyd was entitled to the benefits, and the denial of benefits was within the scope of their authority. Neither party has disputed this issue. Thus, the Court reviews the Plan's decision for abuse of discretion.

In determining whether trustees abused their discretion, the Court considers 1) whether the trustees' interpretation is consistent with the goals of the plan; 2)

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[1] Although Ms. Boyd presents her argument as a question of law, there is no question that the district court applied the law of South Carolina as it exists. Despite the dicta in the Lovett case, South Carolina has not adopted the putative spouse doctrine. 494 S.E.2d at 826. Thus, the district court applied the correct law.

whether it might render some language in the plan meaningless or internally inconsistent; 3) whether the challenged interpretation is at odds with the procedural and substantive requirements of ERISA itself; 4) whether the provisions at issue have been applied consistently; and 5) whether the trustees' interpretation is contrary to the clear language of the plan. Brogan, 105 F.3d at 161.

Section 2.14 of the Plan provides that

> "Eligible spouse" shall mean the husband or wife of a Member to whom the Active Member has been married for a period of at least one year immediately preceding the date he dies or to whom the Active Member is married on the date benefits payable to him hereunder (other than a Pre-Retirement Spouse's Benefit) commence.

South Carolina law forbids a person from having more than one living spouse. The statute provides that "[a]ll marriages contracted while either of the parties has a former wife or husband living shall be void." S.C. Code Ann. § 20-1-80 (Law. Co-op. 1976). Because Ms. Boyd never dissolved her first marriage to Mr. Alston, her second marriage to Richard Boyd was a legal nullity. Day v. Day, 58 S.E.2d 83, 85 (S.C. 1950). Thus, the Plan's decision to terminate benefits is consistent with the language of the Plan and South Carolina law.

Ms. Boyd only seems to challenge the Plan's discretion concerning whether the provisions have been applied consistently. She argues that the Plan paid benefits to another survivor, Clementine Ellis, who was not the legal wife of the Plan member. However, the record reveals that Clementine Ellis was the common law wife of the deceased and the Plan decided not to litigate the issue. In contrast, Ms. Boyd was married to another man and does not have a legal

basis (besides the putative spouse doctrine which is not recognized in South Carolina) to allege that she is the legal wife of Richard Boyd. Furthermore, the Plan reasoned that allowing her and other putative spouses to recover may open the door to multiple claims for surviving spouse benefits. The Trustees' interpretation that a legal marriage is a prerequisite to qualifying as an "eligible spouse" prevents multiple persons from claiming "eligible spouse" status. Thus, the Trustees' decision to deny Ms. Boyd benefits was reasoned, deliberate, and principled, and not inconsistent with their decision regarding Clementine Ellis.

On the issue of certification, the putative spouse doctrine has not been specifically addressed in South Carolina. However, this case is different from Grabois v. Jones, where the question was certified. 77 F.3d 574. In Grabois, the plan fiduciary had not made a decision. Instead, the plan fiduciary filed an interpleader complaint for declaratory judgment as to which of the two claimants was entitled to receive the benefits. Id. at 576-577. In our case, the Trustees decided not to award the benefits and acted within their discretion and consistent with South Carolina law.

For the reasons stated above, we affirm the decision of the district court.

AFFIRMED

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ELNORA MAE BOYD, INDIVIDUALLY
AND AS PERSONAL REPREESNTATIVE
OF THE ESTATE OF RICHARD BOYD,
Plaintiff,

v.

WATERFRONT EMPLOYERS-I.L.A. IN
THE PORTS OF SOUTH CAROLINA
PENSION PLAN,
Defendant.

C.A. NO. : 2-97-0252-18
ENTERED: February 24, 1998

ORDER

This is an unfortunate case of a technical mistake on Plaintiff's part. Despite her best intentions, Plaintiff was never legally married to Richard Boyd. Under South Carolina law, Plaintiff's marriage to her second husband, Richard Boyd, was a legal nullity and void from its inception because she had failed to legally divorce her prior husband, George Alston.

Defendant's plan covered Richard Boyd. At Richard Boyd's death in 1989, Defendant began paying surviving spousal benefits to Ella May Boyd based on Richard Boyd's death. Defendant later learned that Richard Boyd and Ella

May Boyd had never been legally married.[2] The trustees then terminated the plan's payments to Plaintiff. Plaintiff filed this suit to re-instate her benefits.

This court held a bench trial on February 3, 1998. At the conclusion of the trial and in accordance with Fed. R. Civ. P. 52(a), this court now makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Plaintiff married George Alston on June 29, 1951.
2. The Domestic Relations Court ordered Plaintiff and Mr. Alston's "legal separation" on May 11, 1954.
3. Plaintiff and Richard Boyd were married on July 27, 1967, and secured a marriage certificate.
4. Richard Boyd was a member of the Defendant Plan.
4. The Plan provides certain benefits peculiar to an "eligible spouse."
5. Sections 6.04 and 7.03 of the Plan define the term "eligible spouse" as follows:

> "Eligible Spouse" shall mean the husband or wife to whom the Active Member is married on the earlier of:
>
> (a) the date of the Member's death, or
> (b) the date benefits payable to the Member hereunder commence,
>
> and to whom the Member has been married for at least a one year period ending on or before the date of the Member's death.

---

[2] Defendant discovered this when another of its Plan participants, George Alston, began making arrangements for his spousal benefits and revealed that he had never been divorced from Plaintiff. After an investigation, the trustees found that Mr. Alston and Plaintiff had only been legally separated, not divorced.

4. Richard Boyd identified Plaintiff as his spouse to the Administrator of the Defendant Plan.
5. Richard Boyd died in a job related accident on October 17, 1989 at which time the Plan covered him.
6. As a result of Richard Boyd's death, Defendant paid Plaintiff spousal benefits and life insurance proceeds in excess of $170,000.
7. In 1993, the Plan administrator learned from George Alston that Plaintiff and her first husband, George Alston, were never divorced. Defendant's subsequent investigation confirmed this information.
8. Prior to Richard Boyd's death, Plaintiff never obtained a divorce from George Alston.
9. Defendant terminated further benefits on September 20, 1993. Defendant's trustee's affirmed the termination of benefits on January 27, 1994.

II. CONCLUSIONS OF LAW

The South Carolina General Assembly forbids a person to have more than one living spouse.

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. §20-1-80 (1976, as amended).

Under the clear language of this statute, Plaintiff's second marriage was a legal nullity. See Day v. Day, 216 S.C. 334, 58 S.E. 2d 83 (1950). Further, the good faith of a party in believing that that subsequent marriage was valid and legal is of no consequence. Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856, 858-59 (Ct. App. 1992).

The trustees of the Plan are fiduciaries charged with determining a member's eligibility for benefits. When the trustees learned of Ms. Boyd's undissolved marriage to Mr. Alston and terminated her benefits in 1993, the Plan included the following:

> 12.01. Named Fiduciaries. The Trustees shall serve as Named Fiduciaries. The Trustees shall have full and exclusive authority to determine all benefits under the Plan to resolve all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Trustees shall be conclusive and binding upon all persons. In addition, the Trustees have the following powers and duties:
>
> (a) To take such steps as are considered necessary and appropriate to remedy an inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error;

> (b) To interpret the provisions of the Plan; . . .
>
> (e) To determine the benefits to be paid to or for the Members from time to time.

When the "benefit plan gives the administrator a fiduciary discretionary authority to determine eligibility for benefits, or to construe the terms of the plan," the abuse of discretion standand of review applies. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Further, the trustee's determination shall be "conclusive and binding." This provision makes it especially clear that the abuse of discretion standard applies. See Boyd v. Trustees of United Mine Workers Health & Retirement Funds, 873 F.2d 57, 59 (4th Cir. 1989); Richards v. United Mine Workers Health & Retirement Fund, 895 F.2d 133, 135 (4th Cir. 1990).

Because the trustees' decision was reasoned, deliberate, principled and supported by substantial evidence, this court will defer to their decision. See Brogan v. Holland, 105 F.3d 158, 161 (4th Cir. 1997). Deference to a reasoned, principled, deliberate decision of the trustees is necessary, "to ensure that administrative responsibility rests with those whose experience is daily and continual, not with judges whose exposure is episodic and occasional." Berry v. Ciba-Geigy Corp., 761 F.2d 1003, 1006 (4th Cir. 1985); see also Doe v.Group Hospitalization & Medical Servs., 3 F.3d 80, 85 (4th Cir. 1993). By law, Ms. Boyd was not married to Richard Boyd; the trustees' decision to terminate benefits is within their discretion in construing the Plan and determining entitlement to benefits.[3]

---

[3] The Trustees' interpretation that a legal marriage is prerequisite to qualifying as an "eligible spouse" prevents multiple persons from claiming "eligible spouse" status.

The parties stipulated that in January, 1991, the Plan adopted the §12.01 language quoted above explicitly granting trustees authority to render "conclusive and binding determinations." Ms. Boyd argues that the language of the Plan as it existed in 1989, the time of Richard Boyd's death, should control. She suggests that the Plan failed to grant trustees the discretion to construe the Plan and determine benefits, and that this Court should review the trustees' decision *de novo*. This argument fails for three reasons:

1. The terms of the Plan as of the 1993 date control this decision, as this was the year that the trustees construed the Plan and decided to terminate Plaintiff's benefits.

2. The 1991 amendment to the trustees' powers is the appropriate standard under which to judge the trustees' actions. Under ERISA, amendments of Plan provisions are acceptable when the amendment does not relate to substantive requirements. See Sejman v. Warner-Lambert Co., Inc., 889 F.2d 1346, 1349 (4th Cir. 1989). Amendments to pension plans which alter only the standard by which trustee decisions will be reviewed, are not substantive entitlements under ERISA and, therefore, may be modified.

3. Finally, even under the Plan in effect in 1989, the trustees had discretionary powers. The Plan identifies trustees as "fiduciaries" with power to determine questions arising from administration, interpretation and application of the Plan, and power to determine whether a participant has qualified for benefits under the Plan. (See 1986 Plan, Section 12.01(b) and (f)). When "the benefit plan gives the administrator a fiduciary discretionary authority to determine eligibility for benefits,

or to construe the terms of the plan, " the abuse of discretion standard of review applies. Firestone Tire & Rubber Co. v Bruch, 489 U.S. 101, 115 (1989).[4]

Plaintiff next argues that she is entitled to benefits under the "putative spouse doctrine." The doctrine allows a person claiming the benefits of the marriage relationship to receive those benefits despite the technical invalidity of the marriage if the spouse believed in good faith in the validity of the marriage. See Christopher L. Blakesley, The Putative Marriage Doctrine, 60 TUL. L. REV. 1 (1985). The doctrine has never been accepted by South Carolina courts and this court will not adopt it here.

Plaintiff contends that a subsequent decision with respect to surviving spouse benefits of a Ms. Clementine Ellis establishes that she was treated differently, or discriminatorily, with respect to her surviving spouse benefits. This assertion is erroneous for two reasons:

1. On the merits, the Ellis issue did not deal with a circumstance where the marriage relationship indisputably was void. In the Ellis case, they removed the impediment to their marriage before Mr. Ellis's death.
2. The Ellis matter occurred after the trustees' determination respecting Ms. Boyd's benefits and was not before the trustees as part of their records.

Finally, Ms. Boyd asserts that the Plan is estopped or prevented from terminating her benefits because she had

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[4] Even under a *de novo* standard of review, this court would rule in Defendant's favor. S.C. Code Ann. 20-1-80 and the 1986 plan's description of trustees' powers and duties independently justify the trustees' decision to terminate Plaintiff's benefits under a *de novo* standard of review.

been paid benefits from 1989 until 1993. The trustees have an affirmative obligation at law to attempt to recover benefits erroneously paid. "A plan fiduciary must attempt to collect money owed to the plan, including erroneous payments made by a plan to participants and beneficiaries." See 4 RESEARCH INSTITUTE OF AMERICA, PENSION COORDINATOR §5108 (1997); (1977) ERISA Op. Letter No. 77-32. In such circumstances, estoppel or similar doctrines cannot operate.

III. CONCLUSION

Based on the foregoing, the decision of the trustees to terminate surviving spouse benefits is affirmed.

AND IT IS SO ORDERED.

/s/DAVID C. NORTON
United States District Judge

Charleston, South Carolina
February 24, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ENORA MAE BOYD, individually
and as personal representative of the
estate of Richard Boyd.
Plaintiff - Appellant,

v.

WATERFRONT EMPLOYERS ILA
PENSION PLAN,
in the ports of South Carolina,
Defendant - Appellee.

NO. 98-1456
CA-97-252-18-2
ENTERED: August 9, 1999

On Petition for Rehearing and Rehearing En Banc

The Appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court

/s/Patricia S. Connor

_____
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION DIVISION

ELNORA MAE BOYD, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF RICHARD BOYD,

vs.

WATERFORD EMPLOYERS I.L.A.
IN THE PORTS OF SOUTH CAROLINA PENSION PLAN

Case Number: 2:97-0252-18

ENTERED: FEBRUARY 25, 1998

JUDGMENT IN A CIVIL CASE

☒ **Decision by Court.** This action came to before the Court with the Honorable David C. Norton presiding. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the decision of the trustees to terminate surviving spouse benefits is affirmed and the action is hereby dismissed.

LARRY W. PROPES, Clerk

By/s/_____
Deputy Clerk

February 25, 1998

DIRECT EXAMINATION

Q Would you state your name for the record?

A Ella Boyd.

Q And where do you live, Ella?

A 815 Rutledge Avenue.

Q Okay. And that's here in Charleston?

A Yes, sir.

Q And what is your date of birth?

A May 23rd, 1933.

Q And how far did you go in school?

A Seventh.

Q Have you had any education - - formal education after the seventh grade?

A No, sir.

Q Now, were you married to Richard Boyd?

A Yes, Sir.

Q And what name did you call him?

A Red

Q And when did you and Red first begin to live together?

A In '5- - - I think '5- - -'54, '54, somewhere in the fifties.

Q Okay. In the fifties?

A Uh-huh.

Q And did the two of you get married?

A Yes, sir.

Q And did you actually obtain a marriage license?

A Yes, sir.

MR. FLOYD: And, Your Honor, that's Plaintiff's Exhibit 1, or Exhibit A to the pre-trial brief that we filed.

THE COURT: Okay.

BY MR. FLOYD:

Q And was that a marriage license issued to you here in Charleston County?

A Yes, sir.

Q And did you have a marriage ceremony?

A Yes, sir.

Q And who performed the marriage ceremony?

A The Reverend Alonzo Clark.

Q And were there other witnesses in the community present?

A Yes, sir.

Q And did the two of you, from that time, hold out to the community that you were man and wife?

A Yes, sir.

Q And did you all raise children?

A Yes, sir.

Q How many?

A Three.

Q And did the two of you live continuously as husband and wife until the time of his death in 1989?

A Yes, sir.

MR. FLOYD: And, Your Honor, Plaintiff's Exhibit 2 and Exhibit B is the death certificate.

(Pause.)

BY MR. FLOYD:

Q Now, I'm also going to show you what's marked as Plaintiff's Exhibit 2 here in the Court, and was that the funeral bulletin for Mr. - - for Mr. Boyd?

A Yes, sir.

Q And does it include in it the fact that you all were married for many, many years?

A Yes, sir.

Q All right. Now, upon his death did you begin to receive benefits from the Longshoremen Association?

A Yes, sir.

Q And how many years did your husband work on the waterfront?

A Well, he been on the waterfront, I think, from the age of sixteen. He was real young, because he was working on a banana boat, and then he grow up into the waterfront.

Q And do you - - do you remember how old he was when he died?

A Yes, sir.

Q How old was that?

A Well, it was - - about sixty-one.

Q And so after his death did you go down to the waterfront office and begin receiving widow's benefits?

A Yes, sir.

Q Now, did they know you as Red Boyd's wife down there?

A Yes, sir. They should have.

Q Okay. And during his life time had you received medical or health benefits through the - - through the defendant organization?

A Yes, sir.

Q And did you receive those as Red Boyd's wife?

A Yes, sir.

Q And when you went down there did you find that Red Boyd had you named as his wife?

A Yes, sir.

Q And therefore did you start receiving the benefits?

A Yes, sir.

Q Okay. Now, do you recall how long you received the benefits before they stopped?

A I think it's about a year or so.

Q Would it have been about 1993 when they stopped them?

A Yes, sir.

Q So, you would have received them for approximately four years?

A Uh-huh. Yes, sir.

Q Now, did you - - were you at one time married to a man named George Alston?

A Yes, sir.

Q And will you tell us about when you married him?

A It was in the for- - - - about forty - - it was about in the forties that I married George Alston, and - -

Q How old were you then, Ella?

A I was about sixteen or seventeen years old.

A And how long did you stay together?

A About - - about three years, or something like that.

Q Okay. And did you take him to the Charleston Family Court at that time.

A Yes, sir.

Q Now, were you granted a legal separation from him in 1954 by the Court.

A Yes, sir.

Q Now, what did you think that meant when you got a legal separation?

A Well, I thought that legal separation was a divorce, after the judge had separated us.

Q So, when you married Richard Boyd later did you think it was a legal marriage?

A Yes, sir.

Q Did you think you had already been divorced from George Alston?

A That's the way I had think.

Q In fact, hadn't he also started a new family with somebody else, Mr. Alston.

A Yes, sir.

Q Now, and when you and Richard married did he think it was a valid and legal marriage?

A Yes, sir.

Q Now, during the marriage, did you work or stay at home?

A Well, I stayed at home.

Q And was that the agreement of Richard, that he wanted you to do that in the marriage?

A Well, he didn't want me to work.

Q And did he always tell you that you were taken care of by the union?

A Oh, he al- - - he always said if he should die - -

MR. INFINGER: Your Honor, to the extent that he is getting into - -

BY MR. FLOYD:

A Yes, sir.

MR. INFINGER: - - what Mr. Boyd said, I think that's probably objectionable.

THE COURT: Okay. I'll sustain the objection, but go ahead.

BY MR. FLOYD:

Q Now, Ella Boyd, how old were you when Richard died?

A Sixty - - sixty-four - - sixty-two, I think it was.

Q Okay. How old were you? How old were you, Ella, when he died?

A When he died?

Q Yes.

A Sixty - - about sixty-two. Not sixty-two. I mean - - I'll take that back. Sixty - -

Q Were you about fifty-six?

A Yeah. Fifty-six. Yeah, I'm mixed up.

Q Okay.

A I'm sorry.

Q Now, then four years later when they stopped your benefits, were you then over sixty years old?

A Yes, sir.

Q Now, back when you were fifty-six, if you had known that they weren't going to pay you these benefits, would you at least have had a chance to get some training and get a job?

A Yes, sir.

Q And do you think you - - do you think you can do it now, over sixty years of age?

A No, sir. I don't hardly think that.

Q Okay.

(Pause.)

BY MR. FLOYD:

Q Thank you.

MR. FLOYD: No further questions, Your Honor.

MR. INFINGER: Your Honor, if you'll bear with me - -

MR. FLOYD: That was number 6.

MR. INFINGER: - - on these plaintiff's exhibits, then I only have a very few questions.

THE COURT: Yes, sir.

(Off the record colloquy between Clerk and counsel.)

DIRECT EXAMINATION

BY MR. FLOYD:

Q Would you state your name for the record?

A Carrie Greene.

Q And, Mrs. Green, how do you know Ella and Richard Boyd?

A Richard Boyd? I met Richard Boyd when Ella Mae also met Richard Boyd, and I knowed Richard Boyd from that time until the time of his death.

Q Are you related to Ella Boyd?

A Yes.

Q What is your relationship to her.

A That's my niece.

Q And did - - did they always hold themselves out, after they got married, as husband and wife?

A As husband and wife.

Q Okay. And everybody in the community accepted them as husband and wife?

A That's right. Because they was living common law, and after common law they married.

Q And did you ever discuss with Richard whether or not he was planning to - - how he was planning to take care of Ella?

A Well, Richard was always a man of work, and he always said I want Ella to have everything that I made so that woman don't have to worry about nothing after I'm dead, because I'm a working man, and so I'm working for my wife.

Q Okay. And that was always his - -

A Always - -

Q - - intention?

A Always. That was his desire.

Q Thank you Mrs. Greene.

MR. INFINGER: No questions, ma'am.

THE COURT: Thank you, Mrs. Greene.

WITNESS: Okay. Thank you.

MR. FLOYD: And, Your Honor, except - - with the exception of some questions that we may have of Mrs. Davis, we have no further witnesses.

Marriage License

STATE OF SOUTH CAROLINA

County of CHARLESTON

Whereas, It has been made to appear to me, GUS H. PEARLMAN, Probate Judge for CHARLESTON County, upon oath, that Richard Boyd of Charleston, S.C. and Ella Mae Johnson of Charleston, S.C. are legally capacitated to contract matrimony and that their ages are respectfully 32 years and 33 years, and their race is Negro and their nationality is American and that application for license was filed with this Court at 10:10 AM on the 27th day of July, 1967.

These are, therefor, to authorize any person qualified to perform marriage ceremonies for the persons named above, and for the so doing this shall be sufficient warrant.

Given under my Hand and Seal at 2:45 PM, this the 28th day of July A.D. 1967.

/s/_____

Probate Judge

No. 67-1784
The State of South Carolina
COUNTY OF CHARLESTON
IN THE PROBATE COURT

MARRIAGE LICENSE

TO
RICHARD BOYD
AND
ELLA MAE JOHNSON

NOTICE

The Law requires that two of these Licenses be returned by party performing the ceremony to GUS H. PEARLMAN, Probate Judge, within fifteen days, the other to be delivered to the contracting parties.

CERTIFICATE

THIS IS TO CERTIFY THAT Rev. Alphonso H. Clark did this day perform the marriage ceremony for the withto named persons at 707 Cameron St., Charleston, S.C. South Carolina this 29th day of July A.D. 1967

/s/_____
Signature of Party Performing Ceremony

Signatures of Contracting Parties

/s/_____

/s/_____

Attest: A True Copy

/s/_____

Deputy Clerk Probate Court
Charleston County, South Carolina

Attest: A True Copy

/s/_____

Deputy Clerk Probate Court
Charleston County, South Carolina

Honorary Pallbearers

Solomon Green
Wilber Nesbitt
Ed Ellis
Thomas Swinton

Pallbearers

Mr. Robert Rouse
Mr. Freddie Coakley, Jr.
Mr. John Murray, Jr.
Mr. Robert Gibbs
Mr. James Freeman
Mr. Marion Alston
Mr. Richard Smith

Floral Bearers

Ushers of the Church

Acknowledgement

The family of the deceased wishes to extend sincere gratitude for all expressions of kindness and comfort extended during their period of bereavement

-- Arrangements by --

HARLSTON-BOAGS FUNERAL HOME, INC.
121 Calhoun Street
Charleston, South Carolina 29403

Business: 723-3066 Residence: 795-4878

"Service with Dependability, Distinction and Dignity"

Funeral Services
for the late
Mr. Richard "Red" Daniel Boyd

At
St. John's Reformed
Episcopal Church
91 Anson Street
Charleston, South Carolina
Bishop James C. West, Rector
Saturday, October 21, 1989
1:00 P.M.

-- Interment --
Sunset Memorial Gardens
North Charleston, South Carolina

Obituary

Mr. Richard Daniel Boyd, the son of the late Mr. James Stucky and Mrs. Edna Rosalee (Redd) Boyd, was born on October 31, 1935 in Charleston, South Carolina.

Richard was raised and educated in the Charleston public schools. He attended St. John's Reformed Episcopal Church where he was a member of Class #13. He was employed by the International Longshoremen's Association (ILA), Local 1422. He was a dedicated employee who rose to the position of Foreman (Header) and worked diligently for the company for 28 years preceding his death.

He was joined in holy matrimony to Ella Johnson, July 27, 1959.

Richard was always a hard working man who loved his work until this (tragic) accident occurred on October 17, 1989.

He leaves to mourn his passing: a devoted wife, Ella; four daughters and sons-in law, Mrs. Rosalyn (Dennis) James of Goose Creek, South Carolina, Mrs. Mozetta (Roosevelt)

Gadsden and Mrs. Katrina (Thadius) Barr of Charleston, South Carolina, and Mrs. Vivian (Kirk) Tisdale of Columbia, South Carolina. Also included, three stepchildren, Mrs. Patricia Grant, Mrs. Helen Hills and Mr. George Alston of Charleston, South Carolina; three sisters, Mrs. Eliza Storne of Atlanta, Georgia, Mrs. Margaret Pagett of Goldsboro, North Carolina and Mrs. Edna Rivers Justice of Charleston, South Carolina; four brothers, Mr. James Boyd, who preceded him in death, Mr. Robert Boyd of New York, New York, Mr. Mathew Boyd and Mr. Harold Boyd of Charleston, South Carolina; nine grandchildren and six step-grandchildren. Also deeply saddened by his passing are his mother-in-law, Mrs. Lucille Johnson; aunt-in-law, Mrs. Carrie Greene and a host of nieces, nephews, cousins, relatives and friends who can testify to his goodness of character and willingness to help others. He was a loving husband, father, grandfather, brother and friend. He will be deeply missed by those who knew him and loved him.

I'VE DONE MY WORK

I've done my work, I've sung my song,
I've done some good, I've done some wrong,
And I shall go where I belong;
The Lord has willed it so.
He knows my heart and every thought,
He knows what pain and joy I've brought;
And by his love I shall be taught
The way to Him I know.
He knows my soul so weak and blind
So full of fears of mortal mind,
And He will lead, and I shall find
The way to Him I know.
He guides my steps, and He knows best,
He will not harm where He is blest.
And so good-night, I'll take my rest,
Where sweet wild roses grown.

Order of Service

BISHOP JAMES C. WEST, SR. Presiding
MS. OLIVIA H. GRADY, Organist

PROCESSIONAL SENTENCES ..... Page 496

OPENING HYMN ..... No. 433

THE ORDER FOR THE BURIAL OF THE DEAD

PSALTER - Psalm 27 ..... Page 498

SCRIPTURE LESSON - I Corinthians 15:20-26 ..... Page 501
Reverend Jessie Hudson

APOSTLES' CREED ..... page 506

PRAYERS ..... Pages 506-510

SOLO ..... "May The Work I've Done Speak For Me"
Mr. E.R. English

REMARKS ..... Mr. W.M. Wallace
Mr. Benjamin Flowers

HYMN #372 ..... "My Hope"

WORDS OF COMFORT ..... Bishop James C. West, Sr.

BENEDICTION

RECESSIONAL ..... Organist and Choir

COMMITTAL SERVICE ..... At The Graveside

INTERMENT ..... Sunset Memorial Gardens

I HEREBY CERTIFY THIS IS A TRUE COPY OF THE RECORD ON FILE IN THE CHARLESTON COUNTY HEALTH DEPARTMENT

OCT. 20, 1989

/s/_____

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CERTIFICATE OF DEATH

STATE BIRTH NUMBER	STATE FILE NUMBER	
DECEDENT'S NAME Richard D. Boyd	SEX M	DATE OF DEATH 10/17/89
SOCIAL SECURITY NUMBER 250-50-0763	AGE 53	DATE OF BIRTH 10/31/89
BIRTHPLACE Charleston	WAS DECEDENT EVER IN U.S. ARMED FORCES No	

HOSPITAL	FACILITY NAME	CITY, TOWN OR LOCATION OF DEATH
In Patient	M.U.S.C.	Charleston

COUNTY OF DEATH	MARRIED, NEVER MARRIED, WIDOWED, DIVORCED	SURVIVING SPOUSE
Charleston	Married	Ella Johnson

USUAL OCCUPATION		KIND OF BUSINESS/ INDUSTRY
Foreman		I.L.A. Longshoreman
RESIDENCE	COUNTY	CITY TOWN OR LOCATION
S.C.	Charleston	Charleston
STREET AND NUMBER	INSIDE CITY LIMITS	ZIP CODE
815 Rutledge Ave	Yes	29403
WAS RESIDENCE OF HISPANIC ORIGIN	RACE	DECEDENT'S EDUCATION
No	Black	8th
FATHER'S NAME	MOTHER'S NAME	INFORMANTS NAME
James S. Boyd	Edna R. Redd	Ella J. Boyd
MAILING ADDRESS		METHOD OF DISPOSITION
816 Rutledge Ave. Chas. SC 29403		Burial
PLACE OF DISPOSITION		LOCATION
Sunset Mem. Gardens		North Charleston, S.C.
SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH		NAME AND ADDRESS OF FACILITY
/s/ _____		Harleston-Boggs F.H Inc. 121 Calhoun St. Chas. S.C. 29403
LICENSE NUMBER	TIME OF DEATH	DATE PRONOUNCED DEAD
61	4:25 P.M.	October 17, 1989

APPROXIMATE INTERVAL BETWEEN ONSET *AND DEATH*	IMMEDIATE CAUSE
Hours	Internal hemorrhage
UNDERLYING CAUSE Laceration of liver Being struck by a crane	AUTOPSY Yes
WERE AUTOPSY FINDING CONSIDERED IN DETERMINING CAUSE OF DEATH Yes	MANNER OF DEATH Accident

DATE OF INJURY	TIME OF INJURY	INJURY AT WORK	DESCRIBE HOW INJURY OCCURRED
10/17/89	1:35 P.M.	Yes	Hit by a crane.

PLACE OF	LOCATION	CERTIFIER
Dock	State Port's Authority Terminal, Mt. Pleasant	Medical Examiner

SIGNATURE AND TITLE	LICENSE NUMBER	DATE SIGNED
/s/_____	SC14003	10/20/89

NAME OF ADDRESS
Clay Nichols, M.D., MUSC 171 Ashley Ave., Chas. S.C.

REGISTRAR'S SIGNATURE	DATE FILED
/s/_____	Oct. 25, 1989

Change of Beneficiary - The Employee may designate a new beneficiary at any time while insured under the group policy or policies by filing at the office of the Trustees a written request for such change on forms satisfactory to the Insurance company, together with the employees certificate. The change shall be effective upon the signing of the written request, but only if the form is satisfactory to the Insurance Company, and provided the change shall be subsequently endorsed on the certificate by authority of the Insurance Company, but such change shall be without prejudice to the Insurance Company on account of any payment made before the receipt of such written request.

REGISTER CHANGE OF BENEFICIARY

DATE ENDORSED	BENEFICIARY	ENDORSED BY

Check Number	Name of Employee-Beneficiary and Relationship RICHARD BOYD - ELLA MAE BOYD (Wife)
Certificate Number 7385-250-50-0763	Effective Date: 11/18/66

CERTIFICATE
Issued in connection with Group Policy No. 7385
by the
PROVIDENT
LIFE AND ACCIDENT INSURANCE COMPANY
CHATTANOOGA TENNESSEE

To an Employee of an Employer who is contributing to THE WELFARE PLAN OF THE SOUTH CAROLINA AREA WATERFRONT EMPLOYERS- I.L.A. PENSION, WELFARE & VACATION FUND

WATERFRONT EMPLOYERS - I.L.A. PENSION
AND WELFARE FUND
SOUTH CAROLINA AREA
POST OFFICE BOX 21889
CHARLESTON, SOUTH CAROLINA 29413-1889

TELEPHONE 723-5561
AREA CODE 803

September 20, 1993

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mrs. Ella Mae Alston
815 Rutledge Avenue
Charleston, SC 29403

RE: ERRONEOUS BENEFIT PAYMENTS

Dear Mrs. Alston:

It recently has come to the attention of the Waterfront Employers - I.L.A. Pension and Welfare Funds that you erroneously have received benefits from the Funds.

It is our understanding that you were married to Mr. George Alston in 1951, and you have confirmed in our discussions that this marriage was never dissolved by divorce or other court declaration. Accordingly, we have been advised that your purported marriage to Mr. Richard Boyd is void under South Carolina law.

These facts were presented to the Trustees of the Funds at their regular meeting on September 2, 1993. They agreed that based on these facts, you are not now, nor have you ever been entitled to benefits under the Pension or Welfare Plans as the spouse of Mr. Boyd. Accordingly, no further benefits will be paid to you from the Pension or Welfare Funds as the spouse of Richard Boyd.

According to our records, you have received Welfare Plan benefits as Mr. Boyd's spouse in the amount of $5,977.32. After Mr. Boyd's death in 1989, you received a lump sum benefit from the Pension Plan in the gross amount of $99,704.88, as well as monthly payments totalling $70,088.88. You also received death benefits from Provident Life and Accident Insurance Company; we are in the process of confirming the amount of these benefits.

The Trustees of the Funds have a fiduciary obligation to attempt to collect money owed to the Funds, including erroneous payments made by the Funds to participants or beneficiaries. Accordingly, we must ask that you contact the Funds as soon as possible to discuss your plans for repayment of these erroneous payments.

If you disagree with the determination of the Trustees, you have the right to appeal this determination by filing a written notice of appeal with the Plan Administrator within sixty (60) days of this letter. Appeals not timely filed shall be barred. I have enclosed a copy of the provisions of the Plan which describe the appeals procedure.

Sincerely,

/s/ _____
Delores A. Davis
Administrator

Enclosure
cc: Wayne Floyd, Esq. (w/encl.)

At this time, Mrs. Ella Mae Boyd and Messrs. Wayne Floyd and Lawrence Simmons, Attorneys for Mrs. Boyd entered the meeting.

Mr. Floyd explained that Mrs. Boyd married Mr. George Alston in 1960 and separated shortly thereafter. She took Mr. Alston to court. She received what she perceived to be a legal divorce. She later married Mr. Boyd. She and Mr. Boyd raised 3 children. The parties married in good faith.

Mrs. Boyd has a seventh grade education and has never worked outside of the home. He pointed out that Mrs. Boyd is too old to seek gainful employment. Mr. Floyd expressed that he and his client feel they have strong legal arguments against the Boards' decision to terminate Mrs. Boyd's survivor's benefits. He noted that there are legal technicalities regarding this case. He reviewed the Pension Plan finding no provision or legal authority on the part of the Trustees to terminate or revoke the benefits received by his client. He added that in the event there were provisions granting such authority it is too late to revoke these benefits.

He made reference to the "putative" spouse doctrine recognized by many states. He added that the doctrine was not recognized by the State of South Carolina.

Mr. Floyd also noted that there was no other spouse or individual to challenge Mrs. Boyd as the legal spouse of Mr. Boyd.

He stated that the Trustees' decision to terminate benefits may be a violation of Mrs. Boyd's civil and constitutional rights.

He pointed out the time frame involved regarding this matter. He added that Mrs. Boyd opted to accept a lesser amount of compensation by choosing to file under the South Carolina Workers' Compensation Act.

He pointed out that Mr. Boyd thought of Mrs. Boyd as his family. Mrs. Boyd did what Mr. Boyd asked; she stayed at home and raised his 3 children. In Mr. Boyd's mind, he was

protecting his family. He added that the Boyd's were accepted and respected as man and wife.

Trustee New pointed out that Mrs. Boyd was still legally married to Mr. Alston. He asked if there had been any attempt on Mrs. Boyd's part to seek a legal divorce from Mr. Alston.

Mr. Floyd stated that they may pursue that avenue.

Trustee New thanked Mrs. Boyd, Messrs. Floyd and Mr. Simmons for coming. Mr. Floyd expressed his thanks to the Trustees for their time. Messrs. Floyd, Simmons and Mrs. Boyd left the conference room.

Trustee New stated that from an equity standpoint, Mr. Boyd married Mrs. Boyd and had children. He expressed sympathy for her situation.

After extensive discussion, the Trustees concluded that while they were extremely sympathetic to Mrs. Boyd's situation, to ignore South Carolina law under these difficult and compelling circumstances could set a precedent that might require the Fund to pay benefits to multiple beneficiaries in the future. Accordingly, the Trustees agreed that their original decision denying benefits to Mrs. Boyd as the surviving spouse of Mr. Boyd must stand, and that the arguments raised by Mrs. Boyd's counsel could be decided in a court of competent jurisdiction if she chose to pursue the matter.

As the next order of business, Mr. Michael Cox and Ms. Patricia McGehee of Provident Life and Accident Insurance Company entered the conference room.

Mr. Cox reviewed the year-to date results for the current Plan Year (01/01/93 to 09/30/93) and the projected costs and changes for the renewal Plan Year (01/01/94 to 12/31/94) (Exhibit A).

Ms. McGehee explained the PROVIEW program and the Case Management services provided by Provident, as well as the savings to the Fund produced by these programs.

Mr. Cox and Ms. McGehee also discussed the benefits of preferred provider networks, and they added that Provident

would soon have a Health Maintenance Organization license in the State of South Carolina.

Mr. Cox and Ms. McGehee thanked the Trustees and left the conference room.

WATERFRONT EMPLOYERS - I.L.A. PENSION
AND WELFARE FUND
SOUTH CAROLINA AREA
POST OFFICE BOX 21889
CHARLESTON, SOUTH CAROLINA 29413-1889

TELEPHONE 723-5561
AREA CODE 803

January 27, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mrs. Ella Mae Alston
815 Rutledge Avenue
Charleston, SC 29403

RE: APPEAL OF BENEFIT DENIAL

Dear Mrs. Alston:

On September 20, 1993, I notified you by certified mail that you erroneously have received benefits from the Waterfront Employers - I.L.A. Pension and Welfare Funds as the purported spouse of Mr. Richard Boyd, that you are required to repay these benefits to the Funds, and that no further benefits will be paid to you from the Funds as the spouse of Mr. Boyd. I also advised you of your right to appeal this determination and the appeals procedures.

By letter dated October 22, 1993, your attorney notified me of your desire to appeal this decision, and on January 6, 1994, you and your attorney appeared before the Board of Trustees of the Funds to make an oral presentation to the Trustees in support of your appeal.

The Trustees of the Funds have considered the merits of your appeal, the merits of the facts and evidence in support of the denial of benefits, and such other facts and circumstances as deemed relevant.

The Trustees expressed great sympathy with your particular situation. However, they noted that the Pension and Welfare Plans both provide that in order for you to be eligible for benefits under the Plans as the spouse of Mr. Boyd, among other requirements you must have been legally married to Mr. Boyd, (see Pension Plan Sections 2.14 and 6.04; Group Insurance Plan booklet, pages 14-16).

Based upon the evidence before the Trustees, it appears that you married Mr. George Alston in 1951. At the time of your purported marriage to Mr. Boyd in 1967, Mr. Alston was still alive and you have not obtained a divorce dissolving this marriage (nor have you subsequently obtained such a divorce). Accordingly, your purported marriage to Mr. Boyd is void under South Carolina Law.

Under these circumstances, the Trustees have no choice but to affirm their earlier decision denying you benefits as the surviving spouse of Mr. Boyd and requesting that you repay all prior benefits erroneously received. This determination shall be binding on all parties and shall be final except as otherwise provided by law.

Sincerely,

/s/ _____
Delores A. Davis
Administrator

cc: Wayne Floyd, Esq. (by certified mail)

STATE OF SOUTH CAROLINA,
COUNTY OF CHARLESTON

DOMESTIC RELATIONS COURT
OF THE COUNTY OF CHARLESTON
IN THE FAMILY COURT.

ORDER

IN RE:

ELNORA ALSTON,
PETITIONER,
V.
GEORGE ALSTON,
RESPONDENT.

Elnora Alston, Petitioner, and George Alston, Respondent, today appeared in Court in connection with Petition filed by Elnora Alston, asking the Court to require Respondent to support herself and children. She did not ask for a separation.

After hearing from the parties, it appears that the Petitioner is willing for the Respondent to come back to her, but he is unwilling to do so, stating that he is afraid to come back due to her past treatment of him, therefore, under these circumstances, it appears that a separation is indicated.

IT IS THEREFORE ORDERED that Elnora Alston, Petitioner, and George Alston, Respondent, shall hereafter live separate and apart, and that neight one shall threaten, molest, abuse, disturb, or in any other way interfere with, or have anything whatever to do with the other. This constitutes a legal separation between the parties.

IT IS FURTHER ORDERED that temporary custody of the children, Patricia, Helen and George, be and is hereby given to the mother, Elnora Alston, the petitioner herein, subject to further order of the Court.

The father, George Alston, shall have a right to see and visit his children, provided that on the occasion of such visits, he presents himself in a proper manner, engages in no arguments, and creates no disturbance.

IT IS FURTHER ORDERED that the Respondent, George Alston, shall pay into the Court for the support of his children, the sum of Ten Dollars ($10.00) each week, beginning May 15, 1954, and continuing weekly thereafter, subject to further Order of the Court.

It is represented to the Court by the Petitioner that she is at the present time pregnant. The Court has no proof of this but if it is shown to the Court by competent proof that she is pregnant, then the Court will make provision for temporary support for the Petitioner and for the payment of medical bills in connection wit her confinement.

ANY VIOLATION of the provisions of this Order shall subject the offending party to the penalties prescribed under the Domestic Relations Court Act.

\s\ _____
JUDGE, DOMESTIC RELATIONS COURT
OF THE COUNTY OF CHARLESTON

May 11, 1954.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

GEORGE LEROY ALSTON,
PLAINTIFF,

vs.

ELNORA JOHNSON ALSTON aka
ELNORA BOYD,
DEFENDANT.

CASE NO: 94-DR-10-0504
ENTERED: April 14, 1994

FINAL DECREE OF DIVORCE

DATE OF HEARING:	APRIL 14, 1994
TRIAL JUDGE:	Hon. Wayne M. Creech
PLAINTIFF'S ATTORNEY:	Veronica G. Small
DEFENDANT'S ATTORNEY:	Libby Ralston
COURT REPORTER:	

THIS MATTER comes before the court for a final divorce. Present in court were the Plaintiff and his attorney, Veronica G. Small.

The Summons, Verification and Complaint were filed on January 21, 1994. The Defendant was served personally on January 25, 1994, as evidenced by the Affidavit of Service filed herein. No answer or other responsive pleadings were filed on behalf on the Defendant, and she is hereby adjudged to be in default. Notice of the final hearing was sent to the Defendant by certified mail pursuant to Rule 17 of the SCRFC, on March 21, 1994. The notice was

returned undelivered and, thereafter, the Defendant was notified of the hearing by personal service on April 11, 1994, as evidenced by the Affidavit of Service filed herein.

BASED UPON the pleadings filed, the testimony of Plaintiff and his corroborating witness, this court makes the following findings of facts based upon the preponderance of the evidence presented:

FINDINGS OF FACT

1. Plaintiff and Defendant are husband and wife having been married on June 29, 1951, in the County of Charleston, State of South Carolina.
2. Plaintiff and Defendant are residents of the State of South Carolina and have been such for more than three (3) months preceding the filing of this action.
3. Plaintiff and Defendant have lived separate and apart continuously without cohabitation since 1953, through the present time which is in excess of one (1) year.
4. Plaintiff desires a divorce on the basis of one (1) year's continuous separation and does not desire a reconciliation nor does she believe one possible.
5. Plaintiff and Defendant have three children, all of whom are emancipated.
6. Plaintiff and Defendant have no real or personal property to be divided.

BASED UPON the foregoing findings of facts, the court concludes as a matter of law the following:

CONCLUSIONS OF LAW

1. That this court has jurisdiction over this matter pursuant to 20-7-420, and 20-7-472 of the Code of Laws of South Carolina.

2. That venue is proper pursuant to 20-3-60 of the Code of Laws of South Carolina.

3. That Plaintiff is entitled to a divorce pursuant to 20-3-10(5) of the Code of Laws of South Carolina.

NOW THEREFORE, It is

ORDERED, ADJUDGED, AND DECREED that Plaintiff be and is hereby granted a divorce a vinculo matrimonii of and from the Defendant on the basis of one (1) year's continuous separation and that the bonds of matrimony heretofore existing between the parties shall forever be dissolved.

AND IT IS SO ORDERED this 21st day of April, 1994.

/s/Wayne M. Creech, Judge
WAYNE M. CREECH, JUDGE
FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

At Moncks Corner, South Carolina

ARTICLE II
DEFINITIONS

2.01 "Accrued Benefit" shall mean that portion of the monthly pension benefit earned to the date of reference, computed according to the provisions of Section 4.01 hereof.

2.02 "Administrator" and "Administrator Staff" shall mean the persons and staff employed by the Trustees to administer the Plan on a day to day basis pursuant to the terms hereof and the direction of the Trustees.

2.03 "Age" shall mean the age of the Member as of his most recent preceding birthday.

2.04 "Agreement and Declaration of Trust" shall mean the Agreement and Declaration of Trust, as amended, made the 3rd day of October, 1957, by the Union and the Employers, whereby the Union and the Employers delegated to the Trustees the duty of formulating the Plan. A copy of the Agreement and Declaration of Trust is attached hereto as Exhibit C and is made a part hereof.

2.05 "Anniversary Date" shall mean any October 1, during which this Plan is in effect.

2.06 "Beneficiary" shall mean the person or persons last designated by a Member, by a written notice, with Spousal Consent if required hereunder, filed with the Plan Administrator, to receive any benefit which may be payable under this Plan as a result of the death of the Member; or, if there is no designated Beneficiary, any such benefit shall be paid to the first surviving class of the following classes of successor beneficiaries, in the order indicated:

(a) the Member's surviving Eligible Spouse;
(b) his personal representatives;
(c) his surviving children in equal amounts;

(d) any relative by blood or marriage of the deceased Member, or to any person or persons appearing to be equitably entitled to payment thereof or a part thereof by reason of having incurred on behalf of such Member, in the sole judgment and discretion of the Trustees.

2.07 "Board of Trustees" and "Trustees" shall mean the Trustees under the Agreement and Declaration of Trust.

2.08 "Break-in-Service" shall mean the occurrence of a Plan Year during which an Employee has not completed four hundred (400) or more Hours of Service. Any Break-in-Service shall be deemed to have occurred on the first day of the Plan Year of such Break-in-Service. A Break-in-Service shall not be deemed to have occurred during the first twelve (12) months of an Employee's service merely because of the failure to complete four hundred (400) Hours of Service during any one Plan Year occurring in part during such twelve month period if the Employee completes four hundred (400) Hours of Service during such twelve month period.

A Break-in-Service shall not be deemed to have occurred during any period of Excused Absence unless the Employee fails to return to service at the expiration of his Excused Absence nor shall it be deemed to occur because of an Employee's failure to complete more than four hundred (400) Hours of Service during a Plan Year solely because of his or her retirement, disability or death during such Plan Year.

2.09 "Complete Withdrawal" shall mean when an Employer permanently ceases to have an obligation to contribute under the Plan, or permanently ceases all covered operations under the Plan.

2.10 "Continuous Period" and "Continuous Period of Service" shall mean a period of time in which an Employee does not suffer a Break-in-Service which continued for three (3) or more consecutive Plan Years.

2.11 "Credited Service" shall mean the sum of the Years of Service of a Member.

2.12 "Early Retirement Date" shall mean the actual date of a Member's retirement prior to his or her Normal Retirement Date, but after the member has completed ten (10) Years of Service and has attained an Age of fifty-seven (57) or more.

2.13 "Effective Date" shall mean March 6, 1986.

2.14 "Eligible Spouse" shall mean the husband or wife of a Member to whom the Active Member has been married for a period of at least one year immediately preceding the date he dies or to whom the Active member is married on the date benefits payable to him hereunder (other than a Pre-Retirement Spouse's Benefit) commence.

2.15 "Employee" shall include the following:

(a) "Waterfront Employee" which shall mean an Employee of an Employer whose wage rates and working conditions are governed by

ARTICLE VI
DEATH BENEFITS

6.01 Retired Member. A death benefit of $10,000 shall be paid upon the death of a Retired Member to the person or persons designated as beneficiary to receive pension benefits, provided, however that if such Retired Member has been provided with continuation of life insurance under the welfare plan prior to November 4, 1976 administered by the Trustees, the death benefit shall be $1,000.

6.02 Retired Member's Spouse. If on the effective date of a Retired Member's pension he has a Spouse and if such Member shall remain married to said Spouse until the death of the Member or such Spouse, then a death benefit of $5,000 shall be paid upon the death of a Retired Member's Spouse to the Retired Member or in the event the Retired member has predeceased, to the person or person designated by such Spouse as beneficiary to receive such benefits. This provision is not applicable to the spouse of an Old Timer.

6.03 Deceased Employee's Spouse. The $5,000 death benefit will also be paid to the beneficiary of a deceased spouse covered by the Pre-Retirement Spouse's Benefit. An Eligible Spouse must have been married at least one year to a vested Employee who dies after January 1, 1985.

6.04 Pre-Retirement Spouse's Benefit. (a) If a Member with a vested interest in his Accrued Benefit is credited with at least one Hour of Service after August 22, 1984, and dies after August 22, 1984 and before commencing to receive payment of his Accrued Benefit, the Eligible Spouse of such Member shall be entitled to receive, or commence to receive, as of the first day of the month following the month in which such Member would have attained his Early Retirement Date, the payments that would

have been made to such Eligible Spouse under a 50% Qualified Joint and Survivor Annuity if:

(1) In the case of a Member who dies after attaining his Early Retirement Date, the Participant had retired with an immediate 50% Qualified Joint and Survivor Annuity on the day before his death; or

(2) In the case of a Member who dies on or before attaining his Early Retirement Date, the Member had (i) separated from service on the date of his death, (ii) survived to his Early Retirement Date, (iii) retired with an immediate 50% Qualified Joint and Survivor Annuity at his Early Retirement Date, and (iv) died on the day after the day on which he would have attained his Early Retirement Date.

(b) In the alternative, the Spouse of a deceased Active Member who has been Employed in the Industry for a Continuous Period of ten years with an aggregate of 10,000 or more Hours of Service in a ten year period within said Continuous Period shall be entitled to a monthly benefit equal to 100% of the benefit such deceased Member would have accrued as of the date of his death.

Eligible Spouse in the absence of any Qualified Domestic Relations Order(s).

7.03 Lump Sum Options.

(a) Members and Eligible Spouses. A Member who has reached Normal, Early or Disability Retirement Date and elects to retire, an Eligible Spouse eligible for the 75% Spouses' Survivor Benefit described in Section 7.02, or an Eligible Spouse eligible for the Pre-Retirement Spouse's Benefit described in Section 6.04, each may irrevocably elect that 5%, 10%, 15%, 20%, or 25% of the Actuarial Equivalent of his or her Accrued Benefit on a straight life annuity basis, without taking into account the 120 straight life annuity basis, without taking into account the 120 guaranteed payments described in Section 6.03 (hereinafter the "Elected Lump Sum Amount"), be paid in installments beginning on the date first eligible for payment and on the date first eligible for payment and once per year thereafter, to a maximum of three installments. The election may be fore any combination of yearly payments in any amount per year, but the sum of such payments shall equal the Elected Lump Sum Amount. Election of the Lump Sum Option has no impact on the amount of the 75% Spouses' Survivor Benefit described in Section 7.02. Upon electing the Lump Sum Option, the Accrued Benefit is reduced accordingly for all future purposes of the Plan. In the event a Member or Eligible Spouse dies before receiving all lump sum installments elected by such Member or Eligible Spouse, the remaining lump sum installments shall be paid in one payment to the beneficiary designated by the deceased Member or deceased Eligible Spouse on the beneficiary designation specified for this

benefit. In the case of a married Member. The designated beneficiary of the remaining lump sum installments must be the Member's surviving Eligible Spouse.

(b) Designated Beneficiary of Single Active Member. The designated beneficiary of an Active Member with a vested benefit who dies before retirement and with no Eligible Spouse, may irrevocably elect that 5%, 10%, 15%, 20%, or 25 % or the Actuarial Equivalent of the one hundred twenty (120) months benefit payable to the designated beneficiary under Section 6.03 (b) (hereinafter the "Elected Lump Sum Amount"), be paid in installments beginning on the date first eligible for payment and once per year thereafter, to a maximum of three installments. The amount of the lump sum will be computed using the 4.0% interest rate defined in Article 2.02. The election may be for any combination of yearly payments in any amount per year, but the sum of such payments shall equal the Elected Lump Sum Amount. Upon electing the Lump Sum Option, the monthly benefit is reduced accordingly for all future purposes of the Plan. In the event a designate beneficiary dies before receiving all lump sum installments elected by such designated beneficiary, the remaining lump sum installments shall be paid in one payment to the beneficiary designated by the deceased beneficiary on the beneficiary designation specified for this benefit.

(c) Estates Receiving 120 Guaranteed Payments. Effective on or after January 5, 1995, the estate of a Pensioner who dies on or after

October 1, 1993, and for whom remaining payments under the 120 month guaranteed period are payable to the Pensioner's estate, may irrevocably elect to receive the Actuarial Equivalent or the remaining monthly payments as one lump sum. The amount of the lump sum will be computed using the 4.0% interest rate defined in Article 2.02. If this lump sum option is elected, the estate will

ARTICLE XII
POWERS, DUTIES AND EXEMPTIONS OF TRUSTEES

12.01 Named Fiduciaries. The Trustees shall serve as Named Fiduciaries. The Trustees shall have full and exclusive authority to determine all benefits under the Plan and to resolve all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Trustees shall be conclusive and binding upon all persons. In addition, the Trustees have the following powers and duties:

(a) To take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error;

(b) To interpret the provisions of the Plan;

(c) To act, whether by general rules or by particular decisions so as not to discriminate in favor of or against any persons and so as to treat all persons in similar circumstances uniformly;

(d) To correct any defect, reconcile any inconsistency or supply any omission with respect to this Plan;

(e) To determine the benefits to be paid to or for the Members from time to time;

(f) To determine whether a participant has qualified for benefits under this Plan;

(g) To appoint the Plan Administrator and direct his performance of the duties given him under this Plan;

(h) To appoint a Custodian for the monies in the Fund;

(i) To appoint Investment Advisors;

(j) To engage such professional assistants and consultants as are deemed necessary or advisable, including an enrolled actuary and an accountant.

12.02 Trust Funds – Use of Nominee. The Trustees shall hold the funds and assets received by the Trustees under the Plan subject to the terms of this Plan and for the purposes herein set forth. The Trustees shall be responsible only for such funds and assets as shall actually be received by the Trustees as Trustees hereunder.

So long as the Trustees are acting in a prudent manner, title to any of the assets of the Plan may be held or registered in the name of a nominee of the Trustees for ease of dealing with the same, provided that the books of the trust reflect actual ownership and the Trustees shall be liable for the acts of its nominees. The assets so held or registered shall at all times remain in the possession or under the control of the Trustees.

12.03 Advice of Counsel. The Trustees may consult with legal counsel with respect to the meaning or construction of this Plan or the Trustees' obligation or duties hereunder, or with respect to any action or proceeding or any question of law, and shall be fully protected with respect to any action taken or omitted by the Trustees in good faith pursuant to the advise of such counsel, provided that the Trustees act prudently in choosing the counsel and in retaining him.. Acting prudently shall have the meaning set forth in Section 12.04 below.

12.04 Prudent Man Standard. The Trustees, as well as all other Fiduciaries under this Plan, shall discharge their duties

(2)

Supreme Court, U. S.
FILED
DEC 14 1999
CLERK

No. 99-824

IN THE

Supreme Court of the United States

ELNORA MAE BOYD, Individually and as Personal Representative of the Estate of Richard Boyd,

Petitioner,

v.

WATERFRONT EMPLOYERS – I.L.A. in the Ports of South Carolina Pension Plan,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT FOR DENYING THE PETITION

Rule 10 of the Rules of this Court requires compelling reasons for reviewing issues on certiorari. No compelling reasons exist for review of the decision and judgment of the Fourth Circuit Court of Appeals.

The decision sought to be reviewed deals with the discretionary authority of an ERISA fiduciary to determine eligibility for benefits and to construe the terms of a qualified ERISA Plan. In the instant case, the Court of Appeals noted: "The Trustees decided not to award the benefits and acted within their discretion and consistent with South Carolina law." *See* p. 1, *Appendix of Petitioner*. The decision of the Court of Appeals upheld the Trustees' discretion in interpreting the Plan at issue, and determining eligibility for benefits under that Plan. In this context, the Trustees construed the term "eligible spouse" as defined under the Plan, as a spouse who is legally married to a member of the Plan at his death in order to qualify for surviving spouse benefits. Both the Court of Appeals and the district court noted that the interpretation of the Trustees limiting spousal benefits to "legally married" spouses prevents the problem of multiple persons claiming the same surviving spousal benefit under the Plan. (pp. 6, 11, *Appendix of Petitioner*).

In this context, it is well settled that determination of benefits and construction of the Plan by fiduciaries is given considerable respect by the courts and will not be reversed absent an abuse of discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). This standard of review was established unambiguously by this Court in *Firestone*, and is a firmly rooted principle of law today.

In the face of this, Petitioner seeks a review of the Court of Appeals based on its misapplication of the abuse of discretion standard to the decision below. However, a petition for a writ of certiorari is rarely granted where the asserted error consists of "the misapplication of a properly stated rule of law." Rule 10.

Secondly, there is no conflict in the United States Court of Appeals respecting a decision on an important matter as envisioned by the rules governing certiorari. The conflict which Petitioner seeks to create is based on the refusal of the Fourth Circuit Court of Appeals to request certification to the South Carolina Supreme Court to determine whether the putative spouse doctrine would be adopted in South Carolina. In contrast, the United States Second Circuit Court of Appeals in *Grabois v. Jones*, 77 F.3d 574 (1996) requested certification of a similar issue to the New York State Appellate Court. The New York Appellate Court, in its discretion, declined to accept the certification.

The rule governing certification from federal courts to the South Carolina Supreme Court is SCACR 228, which provides in pertinent part:

> (a) **Scope of Certification**. The Supreme Court *in its discretion may answer* questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying

> court there is no controlling precedent in the decisions of the Supreme Court.

(Emphasis added.) The fact that a question is sought to be certified to the South Carolina Supreme Court does not mean that it will be accepted.

In sum, a decision by one United States Court of Appeals to request certification of an issue to a state court of precedent, and the refusal of another Court of Appeals to request certification of a similar issue to another state court of precedent, is not the type of split of authority within the circuits which justifies a review by this court. In both circumstances, the Courts of Appeal are asking state courts of precedent to determine issues peculiar to state law only; and in the instant case, the issue would have no bearing on the decision of the Trustees.[1]

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1. The Putative Spouse Doctrine does not imbue the putative spouse the status of a legal spouse. It simply effects equity by ignoring the fact that the putative spouse is not a legal spouse in certain circumstances. *See* Petitioner's Petition, p. 6. Thus, even if this doctrine were adopted as the law of South Carolina, it could not override the clear requirement of the Plan in question, that a surviving spouse must have been a "legally married" spouse to obtain surviving spouse benefits. This clear provision prevents multiple claimants.

CONCLUSION

In the instant case, Petitioner requests this Court to review what is claimed to be the Fourth Circuit Court of Appeals' misapplication of the abuse of discretion standard to an ERISA fiduciary decision regarding construction of a qualified Plan and eligibility for benefits under the Plan. Misapplication of a properly stated legal principle is not a ground for review on certiorari. Further, Petitioner urges a conflict in the Circuits respecting "an important matter." The claimed important matter is the request of the Second Circuit for certification of the putative spouse doctrine to a New York State Court of Precedent, and the Fourth Circuit's refusal in the instant case to seek certification to the South Carolina Supreme Court. The certification procedure places discretion in the respective state courts to deny the request. Further, the certification procedure deals only with questions of state law, not federal law nor state law in conflict with federal law.

These are not the types of issues which establish a compelling reason for a petition for writ of certiorari to be granted.

Respectfully submitted,

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